

NORTHERN TERRITORY OF AUSTRALIA
COMMERCIAL PASSENGER VEHICLES LEGISLATION AMENDMENT
ACT 2006

Act No. 3 of 2006

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 3 of 2006

AN ACT

to amend legislation relating to commercial passenger vehicles

[Assented to 8 March 2006]

[Second reading 14 February 2006]

The Legislative Assembly of the Northern Territory enacts as follows:

PART 1 – PRELIMINARY MATTERS

1. Short title

This Act may be cited as the *Commercial Passenger Vehicles Legislation Amendment Act 2006*.

PART 2 – AMENDMENT OF *COMMERCIAL PASSENGER (ROAD) TRANSPORT ACT*

2. Principal Act amended

This Part amends the *Commercial Passenger (Road) Transport Act*.

3. Amendment of section 3 (Interpretation)

Section 3(1) –

insert (in alphabetical order)

"disqualifying offence" means –

- (a) an offence against a law of the Territory prescribed by the Regulations; or

- (b) an offence against a law, or a repealed law, of the Territory or another jurisdiction (including a jurisdiction outside Australia) that substantially corresponds to an offence referred to in paragraph (a);

4. Amendment of section 9 (Consideration of application)

- (1) Section 9(3)(b), (c) and (d) –

omit, substitute

- (b) has been convicted of a disqualifying offence; or
- (c) is otherwise considered by the Director not a fit and proper person to hold, or continue to hold, an accreditation.

- (2) After section 9(3) –

insert

- (3A) Subsection (3)(b) –

- (a) applies regardless of when the offence was committed; but
- (b) does not apply if –
 - (i) the person's criminal record for the conviction is a spent record within the meaning of the *Criminal Records (Spent Convictions) Act*; or
 - (ii) the person was discharged without any penalty being imposed for the conviction.

(3B) Subsection (3)(b) does not apply to the renewal of a person's accreditation in relation to the person's conviction of a disqualifying offence if –

- (a) the Chief Executive Officer has previously decided under this Act the person may hold, or continue to hold, the accreditation despite the conviction; or
- (b) the Local Court has, after the commencement of this subsection, decided under this Act the person may hold, or continue to hold, the accreditation despite the conviction.

(3C) The Director must have regard to the following in considering whether the person is fit and proper for subsection (3)(c):

- (a) whether or not the person has shown a pattern of committing offences;

- (b) any other circumstances concerning the person that the Director considers relevant.

(3) Section 9(5) –

omit, substitute

(5) The Director must give written notice of a decision under this section to the applicant for the accreditation or renewal of accreditation.

5. Amendment of section 75 (Cancellation or suspension of accreditation or licence)

(1) After section 75(3) –

insert

(3A) In addition, the Director must have regard to the following in considering whether the accredited person or holder of a licence is fit and proper for subsection (2):

- (a) whether or not the accredited person or holder has shown a pattern of committing offences;
- (b) any other circumstances concerning the accredited person or holder that the Director considers relevant.

(2) After section 75(5) –

insert

(6) A cancellation or suspension under this section takes effect 7 days after the day of the decision of the cancellation or suspension.

(7) The Director must give written notice of a decision under this section to the person for whom the decision is made.

(8) The Territory is not liable for any loss or damage suffered by a person because of a decision under this section.

6. New sections 75A to 75D

After section 75, in Part 10 –

insert

75A. Cancellation of accreditation for disqualifying offence

(1) The Director must cancel the accreditation of an accredited operator on becoming aware the operator was convicted of a disqualifying offence (whether or not the conviction occurred after the commencement of this section).

(2) Subsection (1) does not apply if –

- (a) the operator's criminal record for the conviction is a spent record within the meaning of the *Criminal Records (Spent Convictions) Act*; or
- (b) the operator was discharged without any penalty being imposed for the conviction.

(3) If the conviction occurs on or after the commencement of this section, subsection (1) does not apply if –

- (a) the Chief Executive Officer has previously decided under this Act the operator may hold, or continue to hold, the accreditation despite the conviction; or
- (b) the Local Court has previously decided under this Act the operator may hold, or continue to hold, the accreditation despite the conviction.

(4) If the conviction occurred before the commencement of this section, subsection (1) applies –

- (a) whether or not the Director or a person designated by the Director had previously decided under this Act the operator may hold, or continue to hold, the accreditation despite the conviction; and
- (b) whether or not the Local Court had previously decided under this Act the operator may hold, or continue to hold, the accreditation despite the conviction; and
- (c) whether or not the conviction had been taken into account in any decision under this Act to accredit the operator or renew the operator's accreditation.

(5) The Director must give written notice to the operator of the decision.

(6) The cancellation takes effect 7 days after the day of the decision.

(7) The lodging of an appeal against the conviction does not affect the operation of this section.

(8) However, if the appeal is successful, the operator's accreditation is taken to be in force again on the decision on the appeal.

(9) The Territory is not liable for any loss or damage suffered by the operator because of the decision.

(10) This section applies despite section 75.

75B. Suspension of accreditation for disqualifying offence

(1) If an accredited operator is charged with a disqualifying offence, the Director may suspend the accreditation for the period the Director considers appropriate.

(2) The Director must give written notice to the operator of the decision.

(3) The suspension takes effect 7 days after the day of the decision.

(4) If the operator is not convicted of the disqualifying offence, the operator's accreditation is taken to be in force again on the decision on the charge.

(5) The Territory is not liable for any loss or damage suffered by the operator because of the decision.

(6) This section applies despite section 75.

75C. Accredited operator to notify Director about charge for disqualifying offence

(1) An accredited operator must immediately give written notice to the Director if the operator is charged with a disqualifying offence.

Penalty: 100 penalty units.

(2) Immediately after a court has dealt with the charge, the operator must give written notice to the Director of the outcome of the charge.

Penalty: 100 penalty units.

75D. Inquiries about fitness to hold accreditation

(1) The Director may make inquiries about a person for deciding whether the person is fit and proper to hold, or continue to hold, an accreditation.

(2) For subsection (1), the Director may request the Commissioner of Police to provide the Director with the following:

- (a) a written report of the criminal history for the person;
- (b) other evidence in relation to the character of the person.

(3) Subject to other laws in force in the Territory, the Commissioner of Police must comply with the request.

(4) For subsection (2)(a), the criminal history of a person is that which is –

- (a) in the possession of the Commissioner of Police; or
- (b) ordinarily accessible to the Commissioner through arrangements with the police service of another jurisdiction, including a jurisdiction outside Australia.

7. Repeal and substitution of section 76

Section 76 –

repeal, substitute

76. Reviews by Chief Executive Officer for disqualifying offences

(1) This section applies to a person if –

- (a) under section 9, the Director refuses the person's application for an accreditation or the renewal of an accreditation because the person has been convicted of a disqualifying offence; or
- (b) under section 75A, the Director cancels the person's accreditation because the person has been convicted of a disqualifying offence; or
- (c) under section 75B, the Director suspends the person's accreditation because the person has been charged with a disqualifying offence.

(2) The person may request the Chief Executive Officer to review the decision to decide whether there are any exceptional circumstances that warrant the person holding, or continuing to hold, an accreditation despite the conviction or charge.

(3) The request must –

- (a) be made within 28 days after the person receives notice of the Director's decision; and

- (b) state the circumstances the person considers to be exceptional as referred to in subsection (2).
- (4) On the review, the Chief Executive Officer must confirm or revoke the Director's decision.
- (5) The Chief Executive Officer must give the person written notice of the Chief Executive Officer's decision and the reasons for it.
- (6) Section 77 applies (with the necessary changes) to the Chief Executive Officer's decision.
- (7) Without limiting subsection (6), section 77 applies as if a reference to the Director were a reference to the Chief Executive Officer.
- (8) On and after the revocation of the cancellation or suspension by the Chief Executive Officer, the person's accreditation is taken to be in force again.
- (9) If the Chief Executive Officer acts with reasonable timeliness in relation to the review of the cancellation or suspension of a person's accreditation, the Territory is not liable for any loss or damage suffered by the person because of the cancellation or suspension.
- (10) If –
 - (a) the Chief Executive Officer revokes the Director's decision to refuse an application referred to in subsection (1)(a); and
 - (b) the Director did not refuse the application under section 9(3)(a) or (c) (or both),the Chief Executive Officer must substitute the Director's decision for the application and direct the Director to accredit the person or renew the person's accreditation (as the case requires).
- (11) The Director must comply with the request as soon as possible.
- (12) The Chief Executive Officer may make procedural guidelines for reviews under this section.

8. Amendment of section 77 (Appeal to Local Court)

- (1) Section 77(3) and (4) –

omit, substitute

- (3) If a person is entitled to have a decision reviewed under section 76, the person must first exhaust the remedy under that section before applying under subsection (1) in relation to the decision.

(4) Without limiting subsection (3), the person must first exhaust the remedy under section 76 before applying under subsection (1) if –

- (a) the person may seek a review under section 76 of a decision arising from a particular provision in this Act (for example, a refusal to accredit the person because of section 9(3)(b)); and
- (b) the person may also apply under subsection (1) in relation to the decision because it also arose from another provision in this Act (for example, if the refusal is also based on section 9(3)(c)).

(4A) The application for the appeal must be made –

- (a) within 28 days after –
 - (i) if subsection (3) does not apply – notice of the decision is given to the person; or
 - (ii) if subsection (3) applies – notice of the decision under section 76 is given to the person; or
- (b) as otherwise decided by the Court if satisfied it is just and reasonable to do so in the circumstances.

(2) Section 77(8) –

omit, substitute

(8) An appeal must be by way of hearing de novo.

PART 3 – AMENDMENT OF *MOTOR VEHICLES ACT*

9. Principal Act amended

This Part amends the *Motor Vehicles Act*.

10. Amendment of section 5 (Interpretation)

Section 5(1) –

insert (in alphabetical order)

"disqualifying offence" has the same meaning as in the *Commercial Passenger (Road) Transport Act*;

11. New section 11AA

After section 11 –

insert

11AA. Inquiries about fitness to hold commercial passenger vehicle licence

(1) The Registrar may make inquiries about a person for deciding whether the person is fit and proper to hold, or continue to hold, a licence to drive a commercial passenger vehicle.

(2) For subsection (1), the Registrar may request the Commissioner of Police to provide the Registrar with the following:

- (a) a written report of the criminal history for the person;
- (b) other evidence in relation to the character of the person.

(3) Subject to other laws in force in the Territory, the Commissioner of Police must comply with the request.

(4) For subsection (2)(a), the criminal history of a person is that which is –

- (a) in the possession of the Commissioner of Police; or
- (b) ordinarily accessible to the Commissioner through arrangements with the police service of another jurisdiction, including a jurisdiction outside Australia.

12. Amendment of section 102 (Refusal, cancellation or suspension of authorities)

(1) After section 102(2) –

insert

(2AA) The Registrar must not grant or renew a licence to drive a commercial passenger vehicle if the applicant has been convicted of a disqualifying offence.

(2AB) Subsection (2AA) –

- (a) applies regardless of when the offence was committed and despite subsection (2); but
- (b) does not apply if –
 - (i) the applicant's criminal record for the conviction is a spent record within the meaning of the *Criminal Records (Spent Convictions) Act*; or
 - (ii) the applicant was discharged without any penalty being imposed for the conviction.

(2AC) Subsection (2AA) does not apply to the renewal of a person's licence in relation to the person's conviction of a disqualifying offence if –

- (a) the Chief Executive Officer has previously decided under this Act the person may hold, or continue to hold, the licence despite the conviction; or
- (b) the Local Court has, after the commencement of this subsection, decided under this Act the person may hold, or continue to hold, the licence despite the conviction.

(2) Section 102(6) –

omit, substitute

(6) A cancellation or suspension of a licence to drive a commercial passenger vehicle takes effect 7 days after the day of the decision of the cancellation or suspension.

(7) The Registrar must give written notice of a decision under this section to the person for whom the decision is made.

(8) The Territory is not liable for any loss or damage suffered by a person because of a decision under this section.

13. New sections 102AAA to 102AAD

After section 102 –

insert

102AAA. Cancellation of licence to drive commercial passenger vehicle for disqualifying offence

(1) The Registrar must cancel the licence of a licensee to drive a commercial passenger vehicle on becoming aware the licensee was convicted of a disqualifying offence (whether or not the conviction occurred after the commencement of this section).

(2) Subsection (1) does not apply if –

- (a) the licensee's criminal record for the conviction is a spent record within the meaning of the *Criminal Records (Spent Convictions) Act*; or
- (b) the licensee was discharged without any penalty being imposed for the conviction.

(3) If the conviction occurs on or after the commencement of this section, subsection (1) does not apply if –

- (a) the Chief Executive Officer has previously decided under this Act the licensee may hold, or continue to hold, the licence despite the conviction; or
- (b) the Local Court has previously decided under this Act the licensee may hold, or continue to hold, the licence despite the conviction.

(4) If the conviction occurred before the commencement of this section, subsection (1) applies –

- (a) whether or not the Registrar had previously decided under this Act the licensee may hold, or continue to hold, the licence despite the conviction; and
- (b) whether or not the Local Court had previously decided under this Act the licensee may hold, or continue to hold, the licence despite the conviction; and
- (c) whether or not the conviction had otherwise been taken into account in any decision under this Act to grant the licence to the licensee or renew the licence.

(5) The Registrar must give written notice to the licensee of the decision.

(6) The cancellation takes effect 7 days after the day of the decision.

(7) The lodging of an appeal against the conviction does not affect the operation of this section.

(8) However, if the appeal is successful, the licence is taken to be in force again on the decision on the appeal.

(9) The Territory is not liable for any loss or damage suffered by the licensee because of the decision.

(10) This section applies despite section 102.

102AAB. Suspension of licence to drive commercial passenger vehicle for disqualifying offence

(1) If a licensee under a licence to drive a commercial passenger vehicle is charged with a disqualifying offence, the Registrar may suspend the licence for the period the Registrar considers appropriate.

(2) The Registrar must give written notice to the licensee of the decision.

(3) The suspension takes effect 7 days after the day of the decision.

(4) If the licensee is not convicted of the disqualifying offence, the licence is taken to be in force again on the decision on the charge.

(5) The Territory is not liable for any loss or damage suffered by the licensee because of the decision.

(6) This section applies despite section 102.

102AAC. Reviews by Chief Executive Officer for disqualifying offences

(1) This section applies to a person if –

(a) under section 102(2AA), the Registrar refuses the person's application for a licence or the renewal of a licence to drive a commercial passenger vehicle because the person has been convicted of a disqualifying offence; or

(b) under section 102AAA, the Registrar cancels the person's licence to drive a commercial passenger vehicle because the person has been convicted of a disqualifying offence; or

(c) under section 102AAB, the Registrar suspends the person's licence to drive a commercial passenger vehicle because the person has been charged with a disqualifying offence.

(2) The person may request the Chief Executive Officer to review the decision to decide whether there are any exceptional circumstances that warrant the person holding, or continuing to hold, a licence to drive a commercial passenger vehicle despite the conviction or charge.

(3) The request must –

(a) be made within 28 days after the person receives notice of the Registrar's decision; and

(b) state the circumstances the person considers to be exceptional as referred to in subsection (2).

(4) On the review, the Chief Executive Officer must decide to confirm or revoke the Registrar's decision.

(5) The Chief Executive Officer must give the person written notice of the Chief Executive Officer's decision and the reasons for it.

(6) On and after the revocation of the cancellation or suspension by the Chief Executive Officer, the person's licence is taken to be in force again.

(7) If the Chief Executive Officer acts with reasonable timeliness in relation to the review of the cancellation or suspension of a person's licence, the Territory is not liable for any loss or damage suffered by the person because of the cancellation or suspension.

(8) If –

- (a) the Chief Executive Officer revokes the Registrar's decision to refuse an application referred to in subsection (1)(a); and
- (b) the Registrar did not refuse the application because of one or more provisions in this Act (other than section 102(2AA)) or the Regulations,

the Chief Executive Officer must substitute the Registrar's decision for the application and direct the Registrar to grant the licence to the person or renew the person's licence (as the case requires).

(9) The Registrar must comply with the request as soon as possible.

(10) The Chief Executive Officer may make procedural guidelines for reviews under this section.

102AAD. Appeal to Local Court

(1) This section applies to a person (the "aggrieved person") who is aggrieved by –

- (a) a decision under section 102 to refuse to grant, transfer or renew a licence, permit or registration other than a refusal under section 102(2AA); or
- (b) a decision under section 102 to cancel, suspend or restrict the use of a licence to drive a commercial passenger vehicle; or
- (c) a decision under section 102 to impose a condition on a licence granted or renewed under section 10; or
- (d) a decision under section 102AAC confirming –
 - (i) the Registrar's decision to refuse to grant or renew a licence to drive a commercial passenger vehicle; or
 - (ii) the Registrar's decision to suspend a licence to drive a commercial passenger vehicle; or

- (iii) the cancellation of a licence to drive a commercial passenger vehicle; or
 - (e) a decision under regulation 9A(1) of the *Motor Vehicles Regulations* to refuse to grant or renew a licence to drive a commercial passenger vehicle.
- (2) The aggrieved person may appeal to the Local Court against the decision.
- (3) If a person is entitled to have a decision reviewed under section 102AAC, the person must first exhaust the remedy under that section before applying under subsection (1) in relation to the decision.
- (4) Without limiting subsection (3), the person must first exhaust the remedy under section 102AAC before applying under subsection (1) if –
- (a) the person may seek a review under section 102AAC of a decision arising from a particular provision in this Act (for example, a refusal to grant a licence to the person because of section 102(2AA)); and
 - (b) the person may also apply under subsection (1) in relation to the decision because it also arose from another provision in this Act (for example, if the refusal is also based on regulation 9A(a)(i) of the *Motor Vehicles Regulations*).
- (5) The application for the appeal must be made –
- (a) within 28 days after –
 - (i) if subsection (3) does not apply – notice of the decision is given to the person; or
 - (ii) if subsection (3) applies – notice of the decision under section 102AAC is given to the person; or
 - (b) as otherwise decided by the Court if satisfied it is just and reasonable to do so in the circumstances.
- (6) The appeal must be by way of hearing de novo.
- (7) The Court must confirm the decision, or revoke it and substitute its own decision.
- (8) At the hearing of the appeal, the Court may make an order about costs it considers appropriate.

14. New section 114

After section 113 –

insert

114. Commercial passenger vehicle licensee to notify Registrar about charge for disqualifying offence

(1) A licensee under a licence to drive a commercial passenger vehicle must immediately give written notice to the Registrar if the licensee is charged with a disqualifying offence.

Penalty: 100 penalty units.

(2) Immediately after a court has dealt with the charge, the licensee must give written notice to the Registrar of the outcome of the charge.

Penalty: 100 penalty units.

15. New section 137C

After section 137B –

insert

137C. Acquisition on just terms

If, but for this section, property is acquired under this Act other than on just terms –

- (a) the person from whom the property is acquired is entitled to receive the compensation necessary to ensure the acquisition is on just terms; and
- (b) a court of competent jurisdiction may determine the amount of compensation or make the orders it considers necessary to ensure the acquisition is on just terms.

**PART 4 – AMENDMENT OF *COMMERCIAL PASSENGER*
*(MISCELLANEOUS) REGULATIONS***

16. Principal Regulations amended

This Part amends the *Commercial Passenger (Miscellaneous) Regulations*.

17. New regulation 7

After regulation 6 –

insert

7. Disqualifying offences

For paragraph (a) of the definition of "disqualifying offence" in section 3(1) of the Act, the offences stated in Schedule 3 are prescribed.

18. New Schedule 3

After Schedule 2 –

insert

SCHEDULE 3

Regulation 7

DISQUALIFYING OFFENCES

An offence against any of the following provisions of the Criminal Code:

1. Section 125B (Possession of child abuse material)
2. Section 125C (Publishing indecent articles) if the article is indecent because it portrays a child who is under, or who looks like he or she is under, 16 years of age
3. Section 125E (Using child for production of child abuse material or pornographic or abusive performance)
4. Section 127 (Sexual intercourse or gross indecency involving child under 16 years)
5. Section 128 (Sexual intercourse or gross indecency involving child over 16 years under special care)
6. Section 130 (Sexual intercourse or gross indecency by provider of services to mentally ill or handicapped person)
7. Section 131 (Attempts to procure child under 16 years)
8. Section 131A (Sexual relationship with child)
9. Section 132 (Indecent dealing with child under 16 years)
10. Section 134(2) or (3) (Incest)

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11. Section 162 (Murder)
12. Section 165 (Attempt to murder)
13. Section 177 (Acts intended to cause grievous harm or prevent apprehension)
14. Section 181 (Grievous harm)
15. Section 182 (Attempting to injure by explosive substances)
16. Section 188(1) (Common assault) if section 188(2)(k) applies
17. Section 192 (Sexual intercourse and gross indecency without consent)
18. Section 192B (Coerced sexual self-manipulation)
19. Section 194 (Kidnapping for ransom)
20. Section 201 (Abduction, enticement or detention of child under 16 years for immoral purpose)
21. Section 202B (Sexual servitude)
22. Section 202C (Conducting business involving sexual servitude)
23. Section 202D (Deceptive recruiting for sexual services)
24. Section 211 (Robbery)

An offence against any of the following provisions of the *Prostitution Regulation Act*:

1. Section 13 (Causing or inducing infant to take part in prostitution)
2. Section 14 (Allowing infant to take part in prostitution)
3. Section 15 (Obtaining payment in respect of prostitution services provided by infant)
4. Section 16 (Entering into agreement for provision of prostitution services by infant)

PART 5 – AMENDMENT OF *MOTOR VEHICLES REGULATIONS*

19. Principal Regulations amended

This Part amends the *Motor Vehicles Regulations*.

20. Amendment of regulation 9A (Fitness to hold licence)

(1) Regulation 9A –

omit

The Registrar

substitute

(1) The Registrar

(2) Regulation 9A, at the end –

insert

(2) The Registrar must have regard to the following in considering whether a person is fit and proper for subregulation (1)(a)(i) or (b)(i):

(a) whether or not the person has shown a pattern of committing offences;

(b) any other circumstances concerning the person that the Registrar considers relevant.
